

JOHN P. MADORE)	
Claimant)	
VS.)	
)	Docket No. 1,025,364
PRESBYTERIAN MANOR)	
Respondent)	
AND)	
)	
PRESBYTERIAN MANORS, INC.)	
Insurance Carrier)	

1. Did claimant suffer an accidental injury?
2. Did claimant's accidental injury arise out of and in the course of his employment?
3. Does claimant have a personal health condition which caused an accident at work? Respondent contends that claimant's type 1 diabetes, which was diagnosed approximately 26 years before the date of accident, was the cause of claimant's fall on the date of accident. Claimant, on the other hand, alleges that as he was turning to talk to a co-worker, his foot slipped on something on the floor and he stumbled backwards, lost his balance and fell, resulting in injuries suffered to his left arm and shoulder.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant, a dietary aide for respondent for the last 12 years, alleges accidental injury on August 20, 2005, when, while speaking to one of his co-workers, Sheila Senn, he turned, his foot slipped on something and he stumbled, lost his balance and fell backwards. Respondent contends that claimant's fall was not the result of a slip, but rather the result of claimant's type 1 diabetes, which claimant has had for approximately 26 years. It is acknowledged in this record that claimant does have diabetic neuropathy, which causes numbness in both feet and most of his toes. Claimant, an insulin-dependent diabetic, regularly monitors his blood sugars and acknowledges that if the blood sugar becomes too low, he loses concentration. Claimant has experienced numerous falls while employed with respondent, some of which are related to his diabetic condition. Respondent contends it is this diabetic condition which led to the fall rather than any accident associated with his employment. However, claimant testified that he felt his foot skid on the floor and it was that skid which threw him off balance.

Respondent argues that claimant's co-worker, Ms. Senn, who was near claimant at the time of his fall, described claimant as taking two steps backwards, trying to regain his balance and then he went down on his left side.¹ However, later in her testimony, Ms. Senn testified that she was walking past claimant when she heard a "whoop."² At that time, Ms. Senn turned around and saw claimant hit a cart with his right hand, take two steps backwards trying to regain his balance and then he went down. It is clear from this description that the "whoops" or "oops" had already occurred at the time Ms. Senn observed claimant attempting to regain his balance. This would indicate that, had there been a slip on something on the floor, Ms. Senn would not have seen that physical activity, but instead only saw the result of what claimant described as a slip or skid.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.³ A worker must suffer personal injury by accident arising both out of and in the course of his employment in order to collect benefits.⁴

¹ P.H. Trans. at 55.

² P.H. Trans. at 65.

³ K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

⁴ K.S.A. 44-501(a).

The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment.⁵

The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service.⁶

Respondent does not deny that the incident described by claimant occurred in the course of his employment, as claimant was at work performing his normal duties. Respondent, however, argues that the accident did not arise out of the employment, but rather is the result of a personal health condition which caused claimant to fall.

"Accident" is defined as,

. . . an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.⁷

In this instance, the Board finds claimant's testimony to be the more credible regarding how this accident actually occurred. Claimant clearly described a slip or skid on an unknown substance which caused him to lose his balance. Respondent's eye witness, Ms. Senn, heard an exclamation and turned in time to see claimant attempting to regain his balance and failing to do so, falling to the floor. The Board finds claimant's testimony that he slipped on the floor to be persuasive. Therefore, the incident in question appears to have resulted from an accident both sudden and unexpected, rather than from the health condition, i.e., the type 1 diabetes, from which claimant suffers. The Board finds that the ALJ's determination that claimant suffered an accidental injury arising out of and in the course of his employment should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the November 29, 2005 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict should be, and is hereby, affirmed.

⁵ *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973).

⁶ *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 689 P.2d 837 (1984).

⁷ K.S.A. 2004 Supp. 44-508(d).

IT IS SO ORDERED.

Dated this ____ day of February, 2006.

BOARD MEMBER

c: Jan L. Fisher, Attorney for Claimant
Kathleen N. Wohlgemuth, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director